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EXAMINER	
TENTONI, LEO B	
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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/733,998
Filing Date: December 10, 2003
Appellant(s): CHANG ET AL.

Bart E. Lerman
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed on 04 September 2007 appealing from the Office action mailed on 06 November 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is incorrect. A correct statement of the status of the claims is as follows:

This appeal involves claims 1-30.

Claims 31-45 have been canceled.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

The examiner notes (for clarification) that the summary of the claimed subject matter of independent claim 1 is set forth beginning on page 2, line 22 and continuing to page 3, line 16 and that the summary of the claimed subject matter of independent claim 16 is set forth beginning on page 3, line 17 and continuing to page 4, line 10.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 2002/0071951 A1	HERNANDEZ et al	06-2002
WO 01/68962 A2	CASEY et al	09-2001

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 16-30 are rejected under 35 U.S.C. 102(b) as being anticipated by Casey et al (WO 01/68962 A2).

Casey et al (see the entire document, in particular, the abstract; page 1, lines 3-9; page 2, line 39 to page 4, line 11; page 9, Table I; page 10, line 32 to page 11, line 10; page 11, lines 32-36; page 12, lines 1-23; page 13, line 4 to page 14, line 18) teaches a process of making 1—6 denier per filament (dpf) textile staple fiber from polytrimethylene terephthalate (PTT) as set forth in the instant claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 16-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Casey et al (WO 01/68962 A2).

Casey et al (see the entire document, in particular, the abstract; page 1, lines 3-9; page 2, line 39 to page 4, line 11; page 9, Table I; page 10, line 32 to page 11, line 10; page 11, lines 32-36; page 12, lines 1-23; page 13, line 4 to page 14, line 18) teaches a process of making 1 – 3 denier per filament (dpf) textile staple fiber from polytrimethylene terephthalate

(PTT) as set forth in the instant claims. Drawing (in a first stage drawing) to a length of from about 30% to about 90% would have been obvious to one of ordinary skill in the art at the time the invention was made in the process of Casey et al principally because Casey et al (like the claimed process) teaches two drawing stages and Casey et al teaches drawing to a length of (preferably) 80 - 85% in the first drawing stage.

Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Casey et al (WO 01/68962 A2) as applied to claims 16-30 above, and further in view of Hernandez et al (U.S. Patent Application Publication 2002/0071951 A1).

Casey et al (discussed previously) teaches a process of making 1 — 3 denier per filament (dpf) textile staple fiber from polytrimethylene terephthalate (PTT) Hernandez et al (see the entire document, in particular, paragraphs [0002], [0011] and [0029]) teaches a process of making 0.8 - 6 denier per filament (dpf) textile staple fiber from polytrimethylene terphthalate (PTT), and it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the disclosures of Casey et al and Hernandez et al principally in order to manufacture a PTT textile staple fiber having a desired

size (e.g., 6 dpf) which is suitable for yarn and other textile applications.

(10) Response to Argument

Appellant argues (page 8, line 21 to page 9, line 10) that the instant invention is directed to aged undrawn yarn, and that aged undrawn yarn in the context of the present invention is not on a takeup reel under tension as described in Casey et al. Examiner responds that a comparison of appellant's specification (page 7, lines 16-27 of the instant specification) with the disclosure of Casey et al (page 3, lines 14-18 and page 10, line 32 to page 11, line 10 of Casey et al) shows that both describe aged undrawn yarn as spun yarn, which is not drawn, and is stored prior to further processing (e.g., drawing). Furthermore, the instant claims are devoid of any positive recitation of tension, or any positive recitation of the absence (or lack) of tension. Regarding appellant's comment regarding commercial spinning speeds and "other commercial conditions", it is not clear what applicant means by "commercial spinning speeds" or "other commercial conditions" and the instant claims are devoid of any positive recitation of "commercial spinning speeds" and "other commercial conditions".

Appellant argues (page 9, lines 11-15) that Casey et al does not meet the conditions required to anticipate the subject matter of claims 16-30. Examiner responds that Casey et al (in particular, the portions of Casey et al cited in the statement of the rejection of claims 16-30) teaches the subject matter of instant claims 16-30 and the examiner notes that appellant does not specifically dispute that Casey et al teaches the conditions, ranges and steps recited in the instant claims, except for the first and second drawing stages conducted under wet conditions (which is addressed next). *Perricone v. Medicis Pharmaceutical Corp.*, 77 USPQ2d 1321, 1327 (Fed. Cir. 2005)(prior art disclosure of a range that does not exactly correspond to the claimed range still anticipates if the prior art range does not "significantly deviate" from claimed range).

Appellant argues (page 9, line 16 to page 10, line 14) that Casey et al does not teach that both the first and second drawing stages are conducted under wet conditions. Examiner responds that Casey et al does teach that both the first and second drawing stages are conducted under wet conditions because Casey et al teaches (page 12, lines 12-23 of Casey et al) that the first draw stage should occur under water heated to a minimum of 60°C, preferably 60°C to 100°C and if desired, the

second draw stage is hotter than the first draw stage up to a practical maximum of the melting point of the yarn, preferably 60°C to 160°C, most preferably 80°C to 100°C and "[u]nlike PET, PTT will not turn harsh in heated draw baths" (emphasis added), which suggests that the second draw stage is also conducted under wet conditions. Regarding appellant's comment on page 10, lines 7-10 that water would boil at a temperature of 160°C, the Examiner notes that the claims recite that the drawing stages occur under wet conditions, and wet conditions is not limited to water (e.g., a material other than water may be used in the instant process, or in the process of Casey et al). Furthermore, the preferred temperature range for the second draw stage in the process of Casey et al is 80°C to 100°C, and water could certainly be used over this temperature range.

Appellant argues (page 10, lines 21-29) that the examiner has provided no facts in support of the rejection of dependent claims 17-30. Examiner responds that Casey et al (in particular, the portions of Casey et al cited in the statement of the rejection of claims 16-30) teaches the subject matter of instant dependent claims 17-30 and the examiner again notes that appellant does not specifically dispute that Casey et al teaches the conditions, ranges and steps recited in the instant claims,

except for the first and second drawing stages conducted under wet conditions (which was addressed above).

Appellant argues (page 10, line 30 to page 12, line 18) that the claimed subject matter of claims 16-30 is not obvious in view of Casey et al because Casey et al is not directed to a process of drawing aged undrawn yarn. Examiner responds that Casey et al (page 3, lines 14-18 and page 10, line 32 to page 11, line 10 of Casey et al) is directed to aged undrawn yarn just as is recited in appellant's specification (page 7, lines 16-27 of the instant specification) because both Casey et al and the instant specification both describe aged undrawn yarn as spun yarn, which is not drawn, and is stored prior to further processing (e.g., drawing).

Appellant argues (page 12, line 19 page 13, line 13) that Hernandez et al does not deal with the issue of drawing aged undrawn PTT yarn, and does not otherwise explicitly or implicitly provide guidance to a person of ordinary skill in the art how to modify the disclosure of Casey et al in order to achieve the presently claimed invention. Examiner responds that Casey et al teaches drawing aged undrawn PTT yarn and it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the disclosures of Casey

et al and Hernandez et al principally in order to manufacture a PTT textile staple fiber having a desired size (e.g., 6 dpf) which is suitable for yarn and other textile applications.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Leo B. Tentoni

Leo B. Tentoni Primary Examiner GAU 1791

Conferees:

/Romulo Delmendo/

Romulo Delmendo Appeals Specialist

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